



Texas Conservative Coalition Research Institute

Comments to the House Committee on Human Services

Response to Request for Information

October 2, 2020

Regarding Charge 3: *Monitor the implementation and expansion of Community Based Care by the Department of Family and Protective Services. Specifically: • Identify and make recommendations to remove barriers to successful implementation of Community-Based Care.*

History of Challenges and Reforms in the Texas Child Welfare System

For decades, the Texas Child Protective Services (CPS) system has faced challenges ranging from staffing and a shortage of placement options to what have been deemed potentially preventable child fatalities. Although the Legislature has continuously sought to invest in, and improve, the child welfare system, CPS continues to face the same issues that have beleaguered the agency since its inception.

Attempts at reforming the current iteration of the Department of Family and Protective Services (DFPS) began in 2005, only one session after the agency was created. [SB 6](#) (79R) sought to reform CPS by reducing employee caseload, utilizing community-based and private providers, and increasing efficiencies in the casework process. Significant resources were constantly dedicated to the agency over the years and by 2013 state leaders determined that the time had come for a major CPS transformation. The 83rd Legislature directed the agency to improve the safety of children, strengthen staff retention, expand prevention services, improve kinship services, and enhance agency infrastructure with the help of additional monetary and staff resources.

During the 2014-2015 interim the Sunset Commission conducted a review of the entire HHS system, including CPS. The agency also retained the services of an outside consultant to complete a thorough top-down review of the entire CPS program. Both studies identified numerous challenges and made recommendations to improve the system, with a heavy focus on ways to increase efficiencies and improve training for caseworkers.^{1,2} Many of these recommendations were adopted by Sunset management actions and via SB 206 (84R).

The problems surrounding the CPS system eventually culminated in a class action lawsuit on behalf of children in long-term foster care. In December 2015, the federal judge overseeing the case found that the Texas foster care system violated the constitutional rights of children by exposing them to unreasonable harm, creating an

environment where foster children "often age out of care more damaged than when they entered."³ The state remains under a Final Order today and continues to be monitored by the judge and two court-appointed monitors on its efforts to implement reforms required by the court.

Leading up to the 2017 Session the agency was still plagued with headlines of child deaths that occurred after multiple reports were made to the state; high caseworker turnover;⁴ a significant rise in "delinquent" cases—those over 60 days old; and even findings that several caseworkers lied about completing visits to children whose families were under CPS investigation.^{5,6,7} In some parts of the state a shortage of placement options led to children and DFPS employees being forced to spend the night in CPS offices until children could be placed.⁸

In December 2016 state leaders approved \$150 million in emergency funding, allowing DFPS to begin hiring over 800 new employees and providing raises to more than 7,000 front line workers and supervisors.⁹ When the Legislature convened the following month, lawmakers once again took action, passing a series of bills to transform the agency. [HB 4](#) (85R) strengthened the caregiver assistance program within CPS; [HB 5](#) (85R) realigned DFPS' structure, making the DFPS Commissioner a direct gubernatorial appointment and providing the agency with greater autonomy from the Health and Human Services Commission (HHSC); and [SB 11](#) (85R) directed the agency to fundamentally change the way CPS is approached and the way in which those services are delivered—through a model known as Community-Based Care (CBC), although it has yet to be fully implemented.

The Legislature renewed its commitment to CPS reform in the 86th Legislative Session when it budgeted significant resources to the continued roll out of CBC to additional areas of the state¹⁰ and passed a number of bills aimed at improving the system. These included initiatives to ease the process for children transitioning out of foster care; helping parents who have sought and received substance abuse treatments to reunify with their children; and helping to ensure children have a voice in their permanency planning hearings.

Unfortunately, a June 2020 [report](#) from the court-appointed monitors painted a picture of a system that is far from stable, prompting the federal judge in early September to threaten to once again hold the state in contempt for failing to abide by the lawsuit's Final Order.¹¹ The report identified a number of problems that included instances in which 11 children died while in state care over a one-year period; inappropriate downgrading of abuse allegations within residential child care centers; inadequate monitoring of children in foster care placement; a fragmented system of data management; and failing to comply with orders to prevent sexual abuse.¹² Overall, the report found that "the Texas child welfare system continues to expose children in permanent managing conservatorship to an unreasonable risk of serious harm."

This history of challenges with the system, while sobering, is not meant to serve as an indictment of the employees who make up the child welfare system. CPS caseworkers have one of the most difficult jobs in, or outside of, state government where the worst of humanity is constantly exposed and child abuse, neglect, and even fatalities are an all too regular occurrence. The aforementioned instances of investigators falsifying CPS records, while inexcusable, are the exceptions rather than the rule and the vast majority of individuals who devote their careers to this line of work do so for wholly altruistic motives.

But these are not recent problems and history has proven these issues are deep and systemic. For years, CPS has been trapped in a cycle of reaching crisis level and receiving an “overhaul” that includes more funding and resources, only to be back in a state of emergency within a relatively short period of time. The upcoming session will undoubtedly see requests for more resources and, while some funding may be needed, it is clearly not the panacea, or Texas’ child welfare system would be in peak condition. The time has come to break this cycle.

The Need for Community-Based Care

One of the most important legislative CPS reforms in recent years was the creation of the Community-Based Care model in SB 11 (85R). This new model is an improved iteration of Foster Care Redesign, originally adopted as part of the 2013 legislative reforms, in which DFPS contracts with private providers across the state for the provision of services for foster care children. Due to implementation issues, including rate problems and an insufficient number of providers in some regions, also known as catchment areas, Foster Care Redesign never rolled out as envisioned and the essential case management function was carved out of the model and given back to the state.

This approach caused challenges by bifurcating responsibilities between DFPS performing case management services and contracted providers coordinating direct care services, placing these providers in the unenviable position of being held responsible for the care and outcomes of a child, while having no authority over actual case management. It also created an environment in which no one entity or individual is ultimately responsible for a child and accountable for that child’s outcome. Because the current Texas CPS system involves so many parties (caseworkers, child placement agencies, regional CPS attorneys, etc.), there is often no single division or entity that bears ultimate responsibility for a child. Not only does this system make accountability nearly impossible, but it also exposes the child to an assortment of individuals who likely are not that familiar with the case and who have not followed it from the beginning.

CBC as contemplated by SB 11 places case management services back into the model, clearly delineating the contracted provider as the responsible party for the child’s care and services, with strong state oversight requirements. A report that evaluated Florida’s transition to a similar system found that, after the community-based care model was implemented, more children were adopted into safe, permanent homes; more children found forever families within two years of entering the system; foster families reported better experiences working with the system and assistance in finding additional resources; caseworkers reported higher morale and less burnout, resulting in greater staff retention; and state spending on child welfare remained flat on community-based care, while outcomes dramatically improved.¹³ Florida has been recognized for finding continued successes under its CBC model even while spending less than the national average per child on CPS.¹⁴

CBC encompasses a theme that no other reform efforts to date have fully embraced- that the support of local communities is critical. Child welfare reform efforts must include an acknowledgement that our local communities bear some responsibility for the health and well-being of their children, and a commitment to actively participate in a transformed system. CBC creates a structure that has never before existed in CPS. One in which the child is at the center of the equation and all other entities support the child’s needs under the direction of a locally contracted provider with clear accountability for that child’s care.

Conclusion and Policy Recommendations

For too long, CPS has existed in crisis mode with significant changes occurring only in response to the latest catastrophe. History has shown time and again that additional money and staff will not solve the program's problems. Lawmakers have appropriated billions of dollars and thousands of staff resources to this cause over the years and the state continues to be faced with the same issues. The state cannot expect to continue the same approach it has taken with CPS and expect different results.

CBC provides the path towards true transformation, but there must be a dedication to successfully employing the model. Even though SB 11 (85R) directed the implementation of CBC and the 86th Legislature appropriated resources for an increased roll-out,¹⁵ it still has not been implemented as directed by state lawmakers. While the COVID-19 pandemic has certainly halted action on virtually all levels of government over the past six months, delays in fully moving towards this model began prior to coronavirus.

The state must fully commit to the roll-out of Community-Based Care in order to introduce accountability and repair the foundational weaknesses that have impeded the success of past reform efforts. To do so, TCCRI recommends that the 87th Legislature and DFPS focus on the following areas:

- Prioritize the Roll Out of Community-Based Care: It is imperative that state leaders and DFPS continue to support the successful implementation of CBC with the goal that it be rolled out statewide as soon as practicable. DFPS is inundated with responsibilities competing for finite time and resources, and the transition to CBC will never happen if the agency waits for the most opportune time. Any new initiatives, including those opportunities provided in the federal [Families First Prevention Services Act](#) (FFPSA), should be implemented only in areas where CBC has already been successfully implemented and in full coordination with the new model. Continuing to invest or implement new programs within the current state-centric model only serves to send the message to staff and stakeholders that the current system is here to stay and further complicates the transition to CBC.
- Ensure Full Accountability of DFPS Funding and Resources for Unused CBC Resources: The 2020-21 General Appropriations Act (DFPS Rider 29) allocated funding for the roll out of CBC to various areas of the state. While some of those goals have been attained, the agency has yet to complete even Stage I implementation in one region and the move to Stage II in another. Lawmakers should require the agency to produce a full accounting of how any unused CBC funding has been used to date to ensure adequate resources remain available as the state moves to statewide implementation.
- Implement Formal Contract Management and Amendment Process for CBC Contracts: DFPS has not historically served as a contract management agency and the move to CBC will represent a change in function. The agency must employ industry-standard contract management processes that outline accountability of both the state and contracted providers, any amendments that need to be made to the contract, and remedies should any violations occur.

CBC provides a long-term vision for truly reforming the CPS system by integrating case management and direct services into a model that ensures one entity bears full responsibility for each child in foster care. Transparency

and accountability are too often a rarity in state government, and this model should be embraced as a path to bring both to a flailing system. Above all else, though, CBC places the child, rather than a convoluted framework of agency personnel and providers, as the focus of its entire system.

About TCCRI

The Texas Conservative Coalition Research Institute (TCCRI) was founded in 1996 by a group of state leaders determined to implement conservative public policies in state government. TCCRI has distinguished itself as a leading state-based think tank and has been very successful in living up to its mission of shaping public policy through a principled approach to government. Its research reports, Task Forces, and policy summits have been instrumental in generating proposals that are shaping Texas government and influencing a new generation of conservative leadership.

The work of TCCRI is based upon four core principles: Limited Government, Individual Liberty, Free Enterprise and Traditional Values. Together, they form our LIFT principles and underpin all TCCRI Task Forces, conferences, and publications. Each principle guides our Board and Staff.

ENDNOTES

¹ The Stephen Group. "Recommendations Report: Appendix A." June 16, 2014. Available at: https://www.dfps.state.tx.us/About_DFPS/Reports_and_Presentations/CPS/documents/2014/Stephens_Group_Report/Stephens_Recommendations_ONLY_appendices.pdf.

² Texas Sunset Advisory Commission. "Staff Report with Final Results: Department of Family and Protective Services." July 2015. Available at: <https://www.sunset.texas.gov/public/uploads/files/reports/DFPS%20Final%20Results.pdf>.

³ Walters, Edgar and Ramshaw, Emily. "Judge: Foster Care System Violates Children's Rights." *The Texas Tribune*. December 17, 2015, available at <https://www.texastribune.org/2015/12/17/judge-foster-care-system-violates-childrens-rights/>.

⁴ Garret, Robert T. "CPS clarifies rule: New caseworkers in Texas must have at least 2-year degree." *Dallas Morning News*. May 27, 2016. Available at: <https://www.dallasnews.com/news/politics/2016/05/27/cps-clarifies-rule-new-caseworkers-in-texas-must-have-at-least-2-year-degree/>.

⁵ *Ibid*.

⁶ Ball, Andrea. "Plan for CPS calls for executive pay raises despite rank-and-file woes." *Austin American Statesman*. June 29, 2016. Available at: <https://www.statesman.com/NEWS/20160903/Plan-for-CPS-calls-for-executive-pay-raises-despite-rank-and-file-woes>.

⁷ Ball, Andrea and Dexheimer, Eric. "Missed Signs, Fatal Consequences Part 3: Dozens of CPS caseworkers caught lying, falsifying documents." *Austin American Statesman*. January 13, 2015, available at <http://projects.statesman.com/news/cps-missed-signs/wrongdoing.html>.

⁸ Chang, Julie. "67 Texas foster children slept in state offices in March and April." *Austin American Statesman*. September 3, 2016; updated September 26, 2018. Available at: <https://www.statesman.com/NEWS/20160903/67-Texas-foster-children-slept-in-state-offices-in-March-and-April>.

⁹ Ward, Mike. "Lawmakers OK millions for raises, new staff for CPS." *Houston Chronicle*. December 2, 2016. Available at: <http://www.chron.com/news/politics/texas/article/Lawmakers-OK-millions-for-raises-new-staff-for-10659994.php>.

¹⁰ See Texas 2020-21 General Appropriations Act, Article II, DFPS Riders 15, 29 and 43.

¹¹ Walters, Edgar. "Federal judge says she will again hold Texas in contempt of court for failing to meet foster care reforms." *The Texas Tribune*. September 4, 2020. Available at: <https://www.texastribune.org/2020/09/04/texas-foster-care-lawsuit-judge-hearing-contempt/#:~:text=U.S.%20District%20Judge%20Janis%20Jack,to%20be%20implemented%20last%20year>.

¹² Platoff, Emma. "Years after a judge ordered fixes, Texas' child welfare system continues to expose children to harm, federal monitors say." *The Texas Tribune*. June 16, 2020. Available at: <https://www.texastribune.org/2020/06/16/texas-child-welfare-harm-federal-monitors/>.

¹³ Foundation for Government Accountability. "Right for Kids: How community based care in Florida transformed child welfare and created hope and opportunity for thousands of kids." October 15, 2013.

¹⁴ Angel, Greg. "How is Florida's cash-strapped foster system finding success?" *Spectrum News 13*. May 24, 2018. Available at: <https://www.mynews13.com/fl/orlando/news/2018/05/24/how-is-florida-s-cash-strapped-foster-system-finding-success>.

¹⁵ See Texas 2020-21 General Appropriations Act, Article II, DFPS Riders 15, 29 and 43.